

Translation

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference S 2843		FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. PCT/EP2004/000488	International filing date (day/month/year) 22.01.2004	Priority date (day/month/year) 23.01.2003	
International Patent Classification (IPC) or national classification and IPC C08B 35/06, A61K 47/48			
Applicant SUPRAMOL PARENTERAL COLLOIDS GMBH			

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>8</u> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> (sent to the applicant and to the International Bureau) a total of _____ sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>																									
<p>4. This report contains indications relating to the following items:</p> <table border="0"> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. I</td> <td>Basis of the report</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability, citations and explanations supporting such statement</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>		<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability, citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
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Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/	Authorized officer
Facsimile No.	Telephone No.

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Box No. I	Basis of the report
1.	<p>With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item:</p> <p><input type="checkbox"/> This report is based on translations from the original language into the following language _____ which is the language of a translation furnished for the purposes of:</p> <p><input type="checkbox"/> international search (Rule 12.3 and 23.1(b))</p> <p><input type="checkbox"/> publication of the international application (Rule 12.4)</p> <p><input type="checkbox"/> international preliminary examination (Rule 35.2 and/or 35.3)</p>
2.	<p>With regard to the elements of the international application, this report is based on (replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):</p> <p><input type="checkbox"/> the international application as originally filed/furnished</p> <p><input checked="" type="checkbox"/> the description:</p> <p>pages 1-16 _____ as originally filed/furnished</p> <p>pages* _____ received by this Authority on _____</p> <p>pages* _____ received by this Authority on _____</p> <p><input checked="" type="checkbox"/> the claims:</p> <p>nos. 1-30 _____ as originally filed/furnished</p> <p>nos.* _____ as amended (together with any statement) under Article 19</p> <p>nos.* _____ received by this Authority on _____</p> <p>nos.* _____ received by this Authority on _____</p> <p><input type="checkbox"/> the drawings:</p> <p>sheets _____ as originally filed/furnished</p> <p>sheets* _____ received by this Authority on _____</p> <p>sheets* _____ received by this Authority on _____</p> <p><input type="checkbox"/> a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.</p>
3.	<p>The amendments have resulted in the cancellation of:</p> <p><input type="checkbox"/> the description, pages _____</p> <p><input type="checkbox"/> the claims, nos. _____</p> <p><input type="checkbox"/> the drawings, sheets/figs _____</p> <p><input type="checkbox"/> the sequence listing (specify): _____</p> <p><input type="checkbox"/> any table(s) related to sequence listing (specify): _____</p>
4.	<p>This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).</p> <p><input type="checkbox"/> the description, pages _____</p> <p><input type="checkbox"/> the claims, nos. _____</p> <p><input type="checkbox"/> the drawings, sheets/figs _____</p> <p><input type="checkbox"/> the sequence listing (specify): _____</p> <p><input type="checkbox"/> any table(s) related to sequence listing (specify): _____</p>

* If item 4 applies, some or all of those sheets may be marked "superseded."

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1. Statement			
Novelty (N)	Claims	3-8, 16-19, 21-22, 26-29	YES
	Claims	1-2, 9-15, 20, 23-25, 30	NO
Inventive step (IS)	Claims		YES
	Claims	1-30	NO
Industrial applicability (IA)	Claims	1-30	YES
	Claims		NO
2. Citations and explanations (Rule 70.7)			
1	This report makes reference to the following documents:		
	D1: DD 279 486 A (AKADEMIE DER WISSENSCHAFTEN DER DDR) 6 June 1990 (1990-06-06)		
	D2: DE 38 36 600 A (WOLFF WALSRÖDE AG) 3 May 1990 (1990-05-03)		
	D3: DE 101 26 158 A (NOVIRA CHEM GMBH) 12 December 2002 (2002-12-12)		
	D4: WO 03/000738 A (FRESENIUS KABI DEUTSCHLAND GMBH) 3 January 2003 (2003-01-03)		
2	<p>Document D1 discloses (the references between parentheses refer to that document) a method for activating polymer compounds containing hydroxyl groups and solid surfaces formed therefrom. Table 6 describes the reaction of pearl cellulose with symmetrical carbonates such as N,N'-disuccinimidyl-carbonate (see no. 1). Starches and starch hydrolysis products (see, e.g., table 10, no. 12) can be used as polymers containing hydroxyl groups. Solvents such as acetone or chloroform are highly suitable (see</p>		

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page 3). The use of the produced, activated matrix was tested in the example relating to the coupling of proteins such as concanavalin A. The field of application is the chemical and pharmaceutical industry.

2.1 INDEPENDENT CLAIM 1

Consequently, document D1 discloses all the features of independent claim 1 in combination. The subject matter of the claim thus lacks novelty (PCT Article 33(2)).

2.2 INDEPENDENT CLAIM 14

Consequently, document D1 discloses all the features of independent claim 14 in combination. The subject matter of the claim thus lacks novelty (PCT Article 33(2)).

2.3 INDEPENDENT CLAIM 20

Consequently, document D1 discloses all the features of independent claim 20 in combination. The subject matter of the claim thus lacks novelty (PCT Article 33(2)).

2.4 INDEPENDENT CLAIM 25

Consequently, document D1 discloses all the features of independent claim 25 in combination. The subject matter of the claim thus lacks novelty

Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
	(PCT Article 33(2)).
2.5	<p>INDEPENDENT CLAIM 30</p> <p>Consequently, document D1 discloses all the features of independent claim 30 in combination. The subject matter of the claim thus lacks novelty (PCT Article 33(2)).</p>
3	<p>Document D2 discloses (the references between parentheses refer to that document) carbonic acid esters of polysaccharides with a degree of substitution of 0.5 to 3.0 and methods for the production thereof. Starches and dextrans, for example, are suitable starting materials. The reaction can be carried out with or without an additional dispersion agent. Suitable dispersion agents are inert solvents such as hydrocarbons or dimethyl acetamide. The reaction temperature preferably ranges from 20 to 90°C. The polysaccharide carbonates are starting products for producing carbamates and for fixing, for example, enzymes. Example 9 discloses the reaction of starches at room temperature in pyridine and benzene with chlorocarbonic acid phenyl ester.</p>
3.1	<p>INDEPENDENT CLAIM 1</p> <p>Consequently, document D2 discloses all the features of independent claim 1 in combination. The subject matter of the claim thus lacks novelty</p>

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(PCT Article 33(2)).

3.2 INDEPENDENT CLAIM 14

Consequently, document D2 discloses all the features of independent claim 14 in combination. The subject matter of the claim thus lacks novelty (PCT Article 33(2)).

3.3 INDEPENDENT CLAIM 15

Consequently, document D2 discloses all the features of independent claim 15 in combination. The subject matter of the claim thus lacks novelty (PCT Article 33(2)).

3.4 INDEPENDENT CLAIM 20

Consequently, document D2 discloses all the features of independent claim 20 in combination. The subject matter of the claim thus lacks novelty (PCT Article 33(2)).

3.5 INDEPENDENT CLAIM 25

Consequently, document D2 discloses all the features of independent claim 25 in combination. The subject matter of the claim thus lacks novelty (PCT Article 33(2)).

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4	<p data-bbox="467 315 1193 346">DEPENDENT CLAIMS 2-13, 16-19, 21-24, 26-29</p> <p data-bbox="467 409 1323 640">Claims 2-13, 16-19, 21-24 and 26-29 do not contain any features which, in combination with the features of any claim to which they refer, meet the PCT requirements for novelty and inventive step.</p> <p data-bbox="467 703 1323 1480">D3 discloses a polymer mixture that is coupled directly to free primary amino groups of proteins, without causing the unwanted cross-linking of the proteins. Polyoxyalkylenes with reactive end groups are capable of chemically coupling to a reactive amino-, thiol-, hydroxy- or carboxylate group of a protein or biomolecule. A succinimidyl carbonate group or a succinimidyl carbonyl end group is understood by an activated group. D4 discloses drug forms such as antibiotic-starch conjugates for antibiotics such as amphotericin. Amylose and amylopectin are considered as starches. With the preferred use of the hydroxyalkylated starches hydroxyethyl starch and hydroxypropyl starch, the average molecular weight can lie between 2000 and $2 \cdot 10^6$ Dalton.</p>
5	<p data-bbox="467 1543 1323 1680">Contrary to PCT Rule 5.1(a)(ii), the description does not cite documents D1 and D2 or indicate the relevant prior art disclosed therein.</p>
6	<p data-bbox="467 1743 1323 1879">The PCT Contracting States do not have uniform criteria for assessing the industrial applicability of claims 1-30 in their present</p>

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form. Patentability may depend on the wording of the claims. The EPO, for example, does not recognise the industrial applicability of claims to the medical use of a compound; it does, however, allow claims to the first medical use of a known compound or to the use of such a compound in the manufacture of a drug for a new medical application.